

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, PA 19103**

**IN THE MATTER OF:**

Homer City Generating Station  
1750 Power Plant Road  
Homer City, PA 15748-8009

**Respondents:**

EME Homer City Generation L.P.,  
Mission Energy Westside, Inc.,  
Chestnut Ridge Energy Company,  
Homer City OL1 LLC,  
Homer City OL2 LLC,  
Homer City OL3 LLC,  
Homer City OL4 LLC,  
Homer City OL5 LLC,  
Homer City OL6 LLC,  
Homer City OL7 LLC,  
Homer City OL8 LLC,  
Pennsylvania Electric Company, and  
New York State Electric & Gas  
Corporation.

Proceedings Pursuant to  
Section 113(a) of the  
Clean Air Act, 42 U.S.C.  
§ 7413(a)

**NOTICE OF VIOLATION**

**DOCKET # CAA-III-10-0006**

**NOTICE OF VIOLATION**

This Notice of Violation ("Notice" or "NOV") is issued to EME Homer City Generation L.P. ("EME Homer City"); Chestnut Ridge Energy Company; Mission Energy Westside, Inc.; Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC, Homer City OL8 LLC (collectively referred to as "Homer City OL1-OL8 LLC"); Pennsylvania Electric Company ("Penelec"); and New York State Electric & Gas Corporation ("NYSEG") for violations of the Clean Air Act ("Act" or "CAA"), 42 U.S.C. § 7401 *et seq*, at the coal-fired power plant identified below.

Commencing in 1988 and continuing to the present, EME Homer City, Chestnut Ridge Energy Company, Mission Energy Westside Inc., Homer City OL1-OL8 LLC, Penelec, and NYSEG (collectively "Respondents") and their predecessors in interest have modified and operated the Homer City Generating Station, a coal-fired power plant located in Indiana County at 1750 Power Plant Road, Homer City, Pennsylvania 15748-8009 (the "Facility") without obtaining Nonattainment New Source Review ("NNSR" or "Nonattainment NSR") permits or Prevention of Significant Deterioration ("PSD") permits or minor New Source Review ("minor NSR") permits authorizing the construction and operation of physical modifications as required by the Act. In addition, for each physical modification at the Facility, Respondents and their predecessors in interest undertook these modifications and operated the Facility without installing and operating pollution control equipment, as required by the Act. Respondents and their predecessors in interest have also failed to submit timely and complete Title V permit applications with information pertaining to these modifications and to supplement the Title V permit applications.

These violations of the Act and the Commonwealth of Pennsylvania's State Implementation Plan ("PA SIP") have resulted in the release of significant amounts of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides ("NO<sub>x</sub>") and particulate matter ("PM") into the environment. Until these violations are corrected, the Facility will continue to release significant amounts of illegal SO<sub>2</sub>, NO<sub>x</sub> and PM into the environment.

This Notice is issued pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a). Section 113(a) of the Act, 42 U.S.C. § 7413(a), requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan ("SIP") or permit of the violations. The authority to issue this Notice has been delegated to the Director of the Air Protection Division of EPA Region III.

### **STATUTORY AND REGULATORY BACKGROUND**

#### **I. The Federal Clean Air Act, 42 U.S.C. § 7401 et seq.**

1. The New Source Review ("NSR") provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a PSD permit or a NNSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. To obtain the required permit, the source must agree to the Best Available Control Technology ("BACT") for an attainment pollutant or achieve the Lowest Achievable Emission Rate ("LAER") in a nonattainment area. Sources may not operate unless they meet the emission limits that would have been imposed by the permitting process. The relevant regulations for purposes of this Notice are the regulations in effect at the time of the violation.

##### **A. CAA PSD Provisions**

2. Part C of Title I of the Act (Section 165(a) of the Act, 42 U.S.C. § 7475(a)), among other things, prohibits the construction and operation of a "major emitting facility" in an area

designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility employs BACT for each pollutant subject to regulation under the Act that is emitted from the facility. The operation of a major stationary source after a major modification, unless the source has applied BACT pursuant to 40 C.F.R. § 52.21(j), is prohibited.

3. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" to include "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."
4. 40 C.F.R. § 52.21(b)(1)(i)(a) defines a "major stationary source" as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation under the Act. Fossil fuel-fired steam electric plants of more than 250 million British thermal units ("Btu") per hour heat input are included among the 28 source categories.
5. Prior to March 2003, 40 C.F.R. § 52.21(b)(2)(i) defined a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. After March 2003, 40 C.F.R. § 52.21(b)(2)(i) defines a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.
6. Prior to March 2003, 40 C.F.R. § 52.21(b)(3)(i) defined "net emissions increase" as the amount by which the sum of the following exceeds zero: a) any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. See also 40 C.F.R. § 52.21(b)(21) (defining "actual emissions" both before March 2003 and before July 1992). After March 2003, 40 C.F.R. § 52.21(b)(3)(i) defines "net emissions increase" with respect to any regulated NSR pollutant emitted by a major stationary source as the amount by which the sum of the following exceeds zero: a) the increase in emissions from a particular physical change or change in method of operation at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
7. 40 C.F.R. § 52.21(b)(23) defines "significant" and states that in reference to NO<sub>x</sub>, SO<sub>2</sub>, PM and PM smaller than 10 microns ("PM-10"), significant net emissions increase means an emissions rate that would equal or exceed 40 tons or more per year of NO<sub>x</sub>, 40 tons or more per year of SO<sub>2</sub>, 25 tons or more per year of PM, and 15 tons or more per year of PM-10. 40 C.F.R. § 52.21(b)(23)(i).
8. Prior to March 2003, 40 C.F.R. § 52.21(b)(21)(i)-(ii) defines "actual emissions" as the average rate, in tons per year, at which the unit "actually emitted the pollutant during a two-year

period which precedes the particular date” and which is representative of normal operation. In addition, for any emissions unit that “has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.” 40 C.F.R. § 52.21(b)(21)(iv). After March 2003, 40 C.F.R. § 52.21(b)(21)(i)-(ii) defines “actual emissions” as the actual rate of emissions of a regulated NSR pollutant from an emissions unit and “[i]n general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and is representative of normal source operation.”

9. An applicant for a permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n).

10. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who commences construction after the effective date of the PSD regulations without applying for and receiving a PSD permit, shall be subject to appropriate enforcement action. 40 C.F.R. § 52.21(r)(1).

11. 40 C.F.R. § 52.21(i) prohibits the construction of any new major stationary source or any major modification without a permit which states that the source or modification would meet the requirements of 40 C.F.R. § 52.21(j) through (r). 40 C.F.R. § 52.21(j) through (r) require, among other things, that a source subject to PSD regulations undergo a control technology review, apply BACT, and conduct air quality modeling.

#### B. CAA Nonattainment NSR Provisions

12. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions for Nonattainment NSR requirements for areas designated as nonattainment for purposes of meeting the national ambient air quality standards (“NAAQS”). The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS.

13. Under Section 172(c)(5) of the Act, 42 U.S.C. § 7502(c)(5), a state is required to adopt Nonattainment NSR SIP rules that include provisions that require that all permits for the construction and operation of modified major stationary sources within nonattainment areas conform to the requirements of Section 173 of the Act, 42 U.S.C. § 7503. Section 173 of the Act, in turn, sets forth a series of requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

14. Section 173 of the Act, 42 U.S.C. § 7503, provides that construction and operating permits may only be issued if: (a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the ambient air standards is maintained; and (b) the pollution controls to be employed will reduce emissions to LAER. See 42 U.S.C. § 7501(3) (defining LAER).

15. Section 182f of the Act, 42 U.S.C. § 7511a(f), sets forth requirements to take effect no later than November 15, 1992, relating to the construction and operation of new or modified major stationary sources of NO<sub>x</sub> located within nonattainment areas for ozone. Section 182f of the Act, 42 U.S.C. § 7511a(f), defines NO<sub>x</sub> as a pollutant that must be treated as a contributor to the criteria pollutant ozone.

16. Sections 171-193 of the Act, 42 U.S.C. §§ 7501-7515, impose SIP requirements for nonattainment areas. Among other things, the statute requires that states adopt SIP provisions establishing a Nonattainment NSR program which includes permitting requirements and other requirements governing construction and operation of new and modified major sources in nonattainment areas. A state's NNSR program must include a mandate that any modified source comply with LAER. See Section 173(a)(2) of the Act, 42 U.S.C. § 7503(a)(2). LAER typically includes installation and operation of state-of-the-art air pollution control equipment. A state's NNSR program must also include provisions requiring the modified source to obtain offsetting emissions reductions. See Section 173(a)(1) of the Act, 42 U.S.C. § 7503(a)(1).

### C. Title V

17. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. See 57 Fed. Reg. 32295; 40 C.F.R. Part 70.

18. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." See also 25 Pa. Code § 127.502. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . ." See also 25 Pa. Code § 121.1.

19. U.S. EPA promulgated final approval of the Pennsylvania Title V program on August 29, 1996. 40 C.F.R. Part 70, Appendix A. Pennsylvania's Title V program became effective on that date. 61 Fed. Reg. 39597.

20. The Pennsylvania regulations governing the Title V permitting program are located at 25 Pa. Code §§ 127.401-127.464 and 127.501-127.543. See 25 Pa. Code § 127.501 (stating provisions in 25 Pa. Code §§ 127.501-127.543 are in addition to requirements in 25 Pa. Code §§ 127.401-127.464).

21. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. See also 25 Pa. Code §§ 127.402 and 127.443.

22. Section 503 of the Act, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application. See

also 25 Pa. Code §§ 127.503 and 127.505.

23. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a); see also 40 C.F.R. § 70.6 and 25 Pa. Code §§ 127.411 - 127.412, 127.441 and 127.501-127.543.

24. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. See also 25 Pa. Code §§ 127.411 - 127.412, 127.441, 127.502-127.503, 127.505, 127.511-127.512, and 127.542.

25. 40 C.F.R. § 70.5(b) provides that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." See also 25 Pa. Code § 127.414.

26. The Pennsylvania Department of Environmental Protection ("PaDEP") has issued several permits for the emission sources at the Facility, one of which is a Title V permit #32-00055, issued on January 30, 2004 with an amendment effective on December 1, 2004 ("Title V Permit").

## **II. Pennsylvania's PSD, Nonattainment NSR, and Minor NSR Provisions**

27. The PA SIP has been approved by EPA (see 40 C.F.R. § 52.2020(b)) and includes 25 Pa. Code § 127.11, which provides that a person may not cause or permit the construction or modification of an air contamination source unless the modification has been approved by the PaDEP.

### **A. Pennsylvania's PSD Provisions**

28. Pursuant to Part C of the Act, the PA SIP adopts the PSD requirements promulgated in 40 CFR Part 52 by the Administrator of the EPA under Section 161 of the Act (42 U.S.C. § 7471). See 25 Pa. Code §§ 127.81 - 127.83 and 40 C.F.R. § 52.2058 (49 Fed. Reg. 33128, Aug. 21, 1984).

### **B. Pennsylvania's Nonattainment NSR Provisions**

(i) Nonattainment NSR Provisions in effect prior to January 8, 1998

29. Pursuant to Part D of the Act, and until January 8, 1998, the Pennsylvania SIP included 25 Pa. Code Chapter 127 Subchapter C - Special Permit Requirements for Sources Locating in or

Significantly Impacting Nonattainment Areas ("Former Subchapter C"). Former Subchapter C included 25 Pa. Code §§ 127.61-127.73 which contained special permit requirements for sources in non-attainment areas. Pursuant to 25 Pa. Code § 127.61 of Former Subchapter C, no person may cause, suffer or permit the construction or modification of an air contamination source in a nonattainment area unless PaDEP determines the requirements of Former Subchapter C are met.

30. Pursuant to 25 Pa. Code § 127.63 of Former Subchapter C, sources with potential emissions equal to or greater than 100 tons per year and meeting the additional requirements of 25 Pa. Code § 127.63 were subject to special permit requirements.

31. Former Subchapter C of the Pennsylvania SIP included 25 Pa. Code § 127.63(1) which subjected sources in nonattainment areas to the special permit requirements of § 127.65 if the source had potential emissions equal to or greater than 100 tons per year ("tpy"); and the source undergoes a major modification or the source is a new source with maximum allowable sulfur oxide ("SOx") or particulate emissions greater than 50 tpy, 1,000 pounds per day, or 100 pounds per hour, whichever is more restrictive.

32. Former Subchapter C of the Pennsylvania SIP included 25 Pa. Code § 127.63(4), which provided that sources must still comply with the special permit conditions of Former Subchapter C (except for 25 Pa. Code § 127.65(1), concerning LAER) where the modifications to existing sources or the construction of new sources individually do not exceed the maximum allowable emission levels specified in 25 Pa. Code § 127.63 (1)-(3) but the aggregate of maximum allowable emissions in plan approval applications submitted to and approved by PaDEP after June 30, 1979 and not previously subject to the conditions of this section exceed the maximum allowable emission levels or significance levels in 25 Pa. Code § 127.63(1)-(3).

33. Former Subchapter C of the Pennsylvania SIP included 25 Pa. Code § 127.65(1), which required new or modified sources subject to special permit requirements to comply with LAER.

34. Former Subchapter C of the Pennsylvania SIP included 25 Pa. Code § 127.65(3) which required emissions from new or modified sources subject to special permit requirements to be offset by emission reductions or emission offset credits under 25 Pa. Code § 127.66.

35. The term "potential emission rate" is defined in 25 Pa. Code § 121.1 as the total weight rate at which a particular air contaminant, in the absence of air cleaning devices, would be emitted per unit of time from an air contamination source when the source is operated at its rated capacity.

36. The term "maximum allowable emissions" is defined in 25 Pa. Code § 121.1 as the emission rate calculated using the maximum rated capacity of the source unless the source is subject to enforceable permit conditions which limit operating rate or hours of operation or both, and the most stringent of the following: a) applicable new source performance standards or standards for hazardous pollutants set forth in 40 C.F.R. Parts 60 and 61; b) applicable emission limitation under 25 Pa. Code Chapters 121-143; c) the emission rate specified as an enforceable permit.

37. Until January 8, 1998, the term "major modification" was defined in the Pennsylvania SIP (25 Pa. Code §121.1) as a physical change in a source or change in the method of operation of a source which would increase the maximum allowable emissions for the source exceeding 50 tpy, 1000 pounds per day or 100 pounds per hour, whichever is more restrictive, for PM, SO<sub>x</sub>, carbon monoxide or volatile organic compounds.

38. Until January 8, 1998, the term "lowest achievable emission rate" was defined in the Pennsylvania SIP (25 Pa. Code §121.1) as the rate of emissions based on the following, whichever is more stringent: a) The most stringent emission limitation which is contained in the Federal implementation plan of a state for the class or category of source unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or, b) the most stringent emission limitation which is achieved in practice by the class or category of source.

(ii) Nonattainment NSR Provisions in effect after January 8, 1998

39. Since January 8, 1998, the Pennsylvania SIP currently requires, pursuant to Part D of the Act, that no construction or operation of a major modification occur unless certain criteria are met. 25 Pa. Code §§ 127.201 - 127.216.

40. Pursuant to 25 Pa. Code § 127.201, a person may not construct or modify an air contamination facility in a nonattainment area unless PaDEP determines the requirements of 25 Pa. Code §§127.201-127.216 are met. 25 Pa. Code § 121.1 defines modification as a physical change or change in method of operation of a source that would increase the amount of an air contaminant emitted or result in the emission of a new air contaminant (excluding routine maintenance, repair and replacement).

41. Pursuant to 25 Pa. Code § 127.203, new sources or sources making modifications which increase their potential to emit (when aggregated with other emission increases per 25 Pa. Code § 127.211) over the significance thresholds specified (for PM, SO<sub>x</sub> and NO<sub>x</sub>) are required to comply with the special permit requirements.<sup>1</sup>

42. Pursuant to 25 Pa. Code § 127.205, PaDEP will not issue a plan approval or operating permit for a new or modified facility or allow continued operations under an existing permit or plan approval unless the facility meets the following special requirements:

- facility complies with LAER (as defined in 25 Pa. Code § 121.1);
- facility is in compliance with the Act;
- facility obtains offsets and emission reduction credits in accordance with 25 Pa. Code §§ 127.206, 127.210 and 127.211;
- and facility conducts analysis of sites.

<sup>1</sup> The relevant significance thresholds in Pennsylvania's NNSR program are 15 tpy of PM-10, 25 tpy of PM, 40 tpy of SO<sub>x</sub>, 50 tpy of carbon monoxide, and 40 tpy of NO<sub>x</sub>. 25 Pa. Code § 127.203.



43. Pursuant to 25 Pa. Code § 127.211, an applicability determination will establish whether a modification which results in an emissions increase is a major modification for 25 Pa. Code § 127.203 and special permit requirements.<sup>2</sup>

C. Pennsylvania's Minor NSR and Title V Provisions

44. The PA SIP includes 25 Pa. Code § 127.25, which provides that “[a] person may not permit the operation of a source subject to § 127.11 (relating to plan approval requirements), unless the source and air cleaning devices identified in the application for the plan approval and the plan approval issued to the source, are operated and maintained in accordance with specifications in the application and conditions in the plan approval issued by the Department. A person may not cause or permit the operation of an air contaminant source subject to this chapter in a manner inconsistent with good operating practices.”

45. The PA SIP includes 25 Pa. Code § 127.11, which provides that “[e]xcept as provided in §§ 127.11a and 127.215 (relating to reactivation of sources; and reactivation), a person may not cause or permit the construction or modification of an air contamination source, the reactivation of an air contamination source after the source has been out of operation or production for 1 year or more, or the installation of an air cleaning device on an air contamination source, unless the construction, modification, reactivation or installation has been approved by the Department.”

46. The PA SIP includes 25 Pa. Code § 127.402 which provides that “[a] person may not operate a stationary air contamination source unless the Department has issued to the person a permit to operate the source under this article in the response to a written application for a permit submitted on forms containing the information the Department may prescribe....”

47. The PA SIP includes 25 Pa. Code §§ 127.411 and 127.412 which contain requirements for the content of permit applications and compliance reviews. 25 Pa. Code § 127.414 of the PA SIP provides that “[t]he applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it files a complete application but prior to the Department taking action on the permit application. The applicant shall provide supplementary facts or corrected information upon becoming aware that it has submitted incorrect information or failed to submit relevant facts. Except as otherwise required by this article, the Clean Air Act or the regulations thereunder, the permittee shall submit additional information as necessary to address changes occurring at the source after the date it files a complete application but prior to the Department taking action on the permit application.”

48. The PA SIP includes 25 Pa. Code § 127.441 which provides that an operating permit “shall incorporate by reference the emission and performance standards and other requirements of the act, the Clean Air Act or the regulations thereunder” and “shall incorporate the monitoring, recordkeeping and reporting requirements required by Chapter 139 (relating to sampling and testing) and other monitoring, recordkeeping or reporting requirements of this article and

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<sup>2</sup> “Major modification” is defined in 25 Pa. Code § 121.1 as a physical change or change in operation that results in emissions increases over the significance thresholds.

additional requirements related to monitoring, recordkeeping and reporting required by the Clean Air Act and the regulations thereunder . . . .”

49. The PA SIP includes 25 Pa. Code § 127.443 which provides that “[a] person may not cause or permit the operation of a source the construction, modification or reactivation of which, or the installation of an air cleaning device on which, is subject to § 127.11 (relating to plan approval requirements), unless the Department has issued a permit to operate the source.”

50. The PA SIP includes 25 Pa. Code § 127.444, which provides that “[a] person may not cause or permit the operation of a source subject to this article unless the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the Department. A person may not cause or permit the operation of an air contamination source subject to this chapter in a manner inconsistent with good operating practices.”

51. The Pennsylvania Title V permitting program also contains requirements for applicable requirements to be in the operating permit for Title V facilities, requirements for owners or operators to include information in the Title V permit application, and requirements for certain permit terms and conditions in a Title V permit which are in addition to the permit requirements in 25 Pa. Code §§ 127.401-127.464. 25 Pa. Code §§ 127.501-127.503, 127.511-127.512, and 127.542.

52. The Pennsylvania Title V regulations are federally enforceable pursuant to Section 113(a)(3), 42 U.S.C. § 7413(a)(3).

53. The PA SIP provisions identified in this NOV are all federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. §§ 7410 and 7413.

### **FACTUAL BACKGROUND**

54. Emissions of SO<sub>2</sub> can cause premature deaths and asthma attacks and are a further health threat when they form fine particulates. SO<sub>2</sub> can contribute to the formation of acid rain, which can damage trees, crops and historic buildings. Acid rain can turn soil, lakes and streams acidic, leaving them unable to support life. SO<sub>2</sub> gases contribute to haze, dramatically reducing visibility.

55. Emissions of NO<sub>x</sub> contribute to the formation of low-level ozone. Ground level ozone, or smog, is formed when NO<sub>x</sub>, hydrocarbons and sunlight combine. Children and people with lung diseases such as asthma and people who work outside can find it difficult to breathe during periods of high levels of ozone. NO<sub>x</sub> also contributes to the formation of acid rain.

56. PM is the term for solid or liquid particles found in the air. Smaller PM of a diameter of 10 micrometers or less is referred to as PM<sub>10</sub>, and even smaller PM of a diameter of 2.5 micrometers

or less is referred to as PM<sub>2.5</sub>. Breathing any variation of PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, and cardiac or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. PM can also reduce visibility and damage man-made materials.

57. EME Homer City is the operator of the Facility. Homer City OL1-OL8 LLC is the owner of the Facility.
58. Mission Energy Westside, Inc., Penelec, and NYSEG were prior owners of the Facility at times relevant to this NOV. Penelec and Mission Energy Westside, Inc. were also prior operators of the Facility at times relevant to this NOV.
59. Chestnut Ridge Energy Company and Mission Energy Westside, Inc. are partners in EME Homer City.
60. The Facility is a fossil fuel-fired steam-electric generating utility plant, with coal as the primary fuel and is located in Indiana County, Pennsylvania. The plant consists of three boiler units with 1884 megawatt ("MW") total generating capacity. Units One and Two at the Facility began operation in 1969 and Unit Three began operation in 1977.
61. The Facility is subject to Title V of the Act (Sections 502 and 503) because it is a major source (as defined in Section 501 of the Act, 42 U.S.C. § 7661, and in 40 C.F.R. § 70.2) with the potential to emit more than 100 tons of SO<sub>2</sub> per year. See also 25 Pa. Code § 121.1.
62. Respondents are each a "person" as that term is defined by both Section 302(e) of the Act, 42 U.S.C. § 7602(e), and the PA SIP. Each Respondent is or has been an "owner" or "operator" as defined in the Act and the PA SIP at times relevant to this NOV.
63. The Facility is located in an area that has the following attainment classifications from 1980 to the present:
- SO<sub>2</sub>- Attainment from 1980 to present**
    - PM**
      - TSP- Attainment since 1980
      - PM10- Unclassified/Attainment since 10/15/90
      - PM2.5- Nonattainment as of 4/5/2005
    - NO<sub>x</sub>/Ozone**
      - NO<sub>2</sub>- Attainment since 1980
      - Ozone 1-hr std- Nonattainment between 1980 and 10/3/86

Attainment/Unclassified between 10/3/86 and 6/15/05, when the  
1-hr standard was revoked  
Ozone 8-hour std- Nonattainment (subpart 1) until 4/20/09  
- Attainment after 4/20/09 but Nonattainment because Indiana County  
is in Ozone Transport Region

### **FINDING OF VIOLATIONS**

64. EPA has identified capital improvement projects at the Facility, beginning [REDACTED], which were modifications (and major modifications) that each caused a significant emissions increase and a significant net emissions increase in at least one of the PSD/Nonattainment NSR regulated pollutants (and regulated NSR pollutants) within the meaning of the Act and the PA SIP. None of these modifications (or major modifications) underwent PSD/Nonattainment NSR permitting review or resulted in the installation and operation of BACT or LAER controls for those pollutants for which emissions significantly increased. Respondents failed to apply for or obtain PSD/Nonattainment NSR permits prior to commencing construction of such modifications (or major modifications.) To EPA's knowledge, none of the requirements contained in 40 C.F.R. § 52.21(j) through (r) nor the Commonwealth of Pennsylvania's requirements contained in 25 Pa. Code §§ 127.81 - 127.83, §127.11, §127.25, §127.402, §127.411, §127.441, §127.443, §127.444, Former Subchapter C (§§127.61-127.73), and §§127.201-127.216 were met prior to construction of the modifications (or major modifications) at the Facility. The modifications at [REDACTED]

65. The violations noted in Paragraph 64 for the modifications identified continue until Respondents comply with state and federal Clean Air Act requirements, install, apply and operate BACT or LAER, and obtain offsets where necessary. Respondents violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21 (including, but not limited to, 40 CFR §§ 52.21(i)(1), 52.21(j), and 52.21(r)(1)), and the PA SIP by commencing construction of, and continuing to operate, the major modifications identified in Paragraph 64 at the Facility without applying for and obtaining PSD/NNSR permits, without installing, applying and operating BACT and LAER, and without obtaining offsets prior to commencing construction of such activities.

66. Since August 29, 1996, Respondents have failed to submit timely, accurate and complete Title V permit applications for the Facility with information pertaining to the modifications identified in Paragraph 64 and with information concerning all applicable requirements for the Facility, including, but not limited to, the requirement to apply, install and operate BACT or LAER for NOx, SO2 and/or PM and also failed to supplement or correct the Title V permit applications for the Facility in violation of Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5(a), (b) and (c), 70.6 and 70.7(b); and the PA SIP and Title V provisions at 25 Pa. Code §§ 127.401-127.464 and 127.501-127.543.

67. The violations noted in Paragraph 66 continue until Respondents submit a complete Title V

permit application.

### **ENFORCEMENT**

48. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or provisions of the PA SIP. See also 40 C.F.R. § 52.23.

49. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

50. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

51. Section 113(c) of the Act, as amended, 42 U.S.C. § 7413(c), further provides for criminal penalties or imprisonment, or both, for any person who knowingly violates any plan or permit requirement more than 30 days after the date of the issuance of a NOV.

### **PENALTY ASSESSMENT CRITERIA**

Section 113(e)(1) of the Act, as amended, 42 U.S.C. § 7413(e)(1), states that the court, in an action for assessment of civil or criminal penalties shall, as appropriate in determining the amount of penalty to be assessed, take into consideration (*i.e.*, in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation.

Section 113(e)(2) of the Act, as amended, 42 U.S.C. § 7413(e)(2) allows the court to assess a penalty for each day of violation. For purposes of determining the number of days of

violation, where the United States makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of the NOV, or a previously issued air pollution control agency NOV for the same violation, the days of violation shall be presumed to include the date of this NOV, or the previous NOV, and each and every day thereafter, until respondent establishes that continuous compliance has been achieved; except to the extent that respondent can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

### **OPPORTUNITY FOR CONFERENCE**

Respondents may, upon request, confer with EPA. The conference will enable Respondents to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondents have a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV. A request for a conference, and/or any other inquiries concerning the NOV should be made in writing to:

Richard P. Killian  
Senior Environmental Enforcement Case Engineer  
Air Protection Division  
U. S. Environmental Protection Agency - Region III  
Mail Code 3AP12  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2159

If you are represented by counsel, your counsel may contact:

Donna L. Mastro, Esq.  
Senior Assistant Regional Counsel  
U. S. Environmental Protection Agency - Region III  
Mail Code 3RC10  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2777.

### **EFFECTIVE DATE**

This NOV shall be effective immediately upon receipt.

### **QUESTIONS REGARDING NOV**

If you have any questions concerning the issuance of this NOV, you may contact Richard P. Killian of my staff at 215-814-2159. If you are represented by counsel, your counsel may contact Donna L. Mastro, Senior Assistant Regional Counsel, at (215) 814-2777.

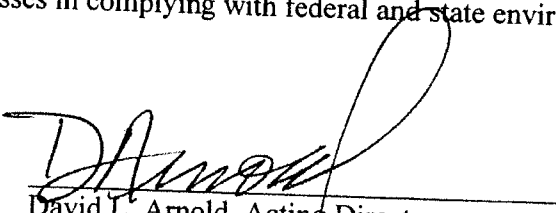
### **DISCLOSURE INFORMATION**

Certain companies may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under federal, state or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company may be subject to the same.

EPA is enclosing an Information Sheet entitled "U.S. EPA Small Business Resources," (EPA 300-F-99-004, September 1999), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with federal and state environmental laws.

Date

5/6/10

  
David L. Arnold, Acting Director  
Air Protection Division